

SENATE BILL 613  
By Trail

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 3 and Title 47, Chapter 4, relative to negotiable instruments and bank deposits and collections.

WHEREAS, a type of negotiable instrument known as a "demand draft," which is termed "payee-initiated demand draft" for clarity purposes in this legislation, is being used more frequently in consumer transactions; and

WHEREAS, these payee-initiated demand drafts are most often initiated by telemarketers who obtain a customer's bank name and account number; and

WHEREAS, these payee-initiated demand drafts are initiated without the customer's actual signature and only a notation of "authorized by customer" or "signature on file"; and

WHEREAS, these payee-initiated demand drafts are often disputed by the customers and cause risk of loss both by the customer and the customer's depository bank; and

WHEREAS, traditional processing rules of the Uniform Commercial Code do not provide adequate remedies to return such items if they are disputed; and

WHEREAS, more than ten states (including California, Colorado, Oregon, Texas and West Virginia) have adopted non-uniform provisions to the UCC to address these problems and the National Commissioners on Uniform Laws have proposed no adequate solution to this problem; and

WHEREAS, Tennessee believes that it is in the best interest of its citizens and depositories to adopt a non-uniform provision of the UCC similar to action taken by more than ten states and with the intent that Tennessee's provision, while not identical in language, should benefit from the reciprocal treatment contemplated among the states; and

WHEREAS, the legislation also provides clarification for lost checks and the definition of "banking day"; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 47-3-103(b), is amended by adding the words, numbers and punctuation "'Payee-initiated demand draft.' § 47-3-104.'" between the items "'Payable to order.' § 47-3-109.'" and "'Payment.' § 47-3-602.'"

SECTION 2. Tennessee Code Annotated, Section 47-3-104, is amended by deleting the first sentence in subsection (f) and by substituting instead the following:

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank, (ii) a cashier's check or teller's check, or (iii) a payee-initiated demand draft.

SECTION 3. Tennessee Code Annotated, Section 47-3-104, is further amended by adding as a new subsection (k) the following:

(k) "Payee-initiated demand draft" means a draft that is not signed by a customer, as defined in Tennessee Code Annotated, Section 47-4-104(5), and that is created by a third party under the purported authority of the customer for the purpose of charging the customer's account with a bank. A payee-initiated demand draft may contain any or all of the following:

- (1) The customer's printed or typewritten name or account number;
- (2) A notation that the customer authorized the draft; or
- (3) the statement "No signature required," "Authorization on file,"

"Signature on file," or words to that effect.

A payee-initiated demand draft shall not include a check purportedly drawn by and bearing the signature of a fiduciary, as defined in Tennessee Code Annotated, Section 47-3-307(a)(1).

SECTION 4. Tennessee Code Annotated, Section 47-3-308, is amended by adding as a new subsection (c) the following:

(c) The presumption under subsection (a) that a signature is presumed to be authentic and authorized does not apply to language, numbers, or symbols placed on a payee-initiated demand draft in lieu of the drawer's signature. In an action to enforce a payee-initiated demand draft against the drawer, the plaintiff has the burden of establishing that the drawer is liable thereon.

SECTION 5. Tennessee Code Annotated, Section 47-3-401(a), is amended by deleting from subsection (a) the word "or" after the language and punctuation "instrument," and before the numbers, punctuation and language "(ii) the person".

SECTION 6. Tennessee Code Annotated, Section 47-3-401(a), is further amended by deleting from subdivision (a) the period and by adding the following:

or (iii) If the instrument is a payee-initiated draft, the person is the customer on whose account the instrument is drawn and has authorized its creation according to the terms on its face.

SECTION 7. Tennessee Code Annotated, Section 47-3-416, is amended by deleting from subdivision (a)(4) the word "and".

SECTION 8. Tennessee Code Annotated, Section 47-3-416, is further amended by deleting from subdivision (a)(5) the period and by substituting a semicolon and the word "and".

SECTION 9. Tennessee Code Annotated, Section 47-3-416, is further amended by adding as a new subdivision (a)(6) the following:

(6) If the instrument is a payee-initiated demand draft, the creation of the instrument according to the terms on its face was authorized by the person on whose account the instrument is drawn.

SECTION 10. Tennessee Code Annotated, Section 47-3-416, is further amended by adding as a new subsection (e) the following:

(e) A warrantor does not make the warranty under subdivision (a)(6) to a transferee who would not under then-applicable law make the same or a substantially identical warranty to the warrantor with respect to a payee-initiated demand draft transferred by the transferee to the warrantor.

SECTION 11. Tennessee Code Annotated, Section 47-3-417, is amended by deleting from subdivision (a)(2) the word “and”.

SECTION 12. Tennessee Code Annotated, Section 47-3-417, is further amended by deleting from subdivision (a)(3) the period and by substituting instead a semicolon and the word “and”.

SECTION 13. Tennessee Code Annotated, Section 47-3-417, is further amended by adding as a new subdivision (a)(4) the following:

(4) if the instrument is a payee-initiated demand draft, the creation of the draft according to the terms on its face was authorized by the person on whose account the instrument is drawn.

SECTION 14. Tennessee Code Annotated, Section 47-3-417, is further amended by adding as a new subsection (g) the following:

(g) A warrantor does not make the warranty under subdivision (a)(4) to a drawee who would not under then-applicable law make the same or a substantially identical warranty to the warrantor with respect to a payee-initiated demand draft drawn on the warrantor and presented or transferred by the drawee.

SECTION 15. Tennessee Code Annotated, Section 47-4-207, is amended by deleting from subdivision (a)(4) the word “and”.

SECTION 16. Tennessee Code Annotated, Section 47-4-207, is further amended by deleting from subdivision (a)(5) the period and by substituting instead a semicolon and the word “and”.

SECTION 17. Tennessee Code Annotated, Section 47-4-207, is further amended by adding as a new subdivision (a)(6) the following:

(6) If the item is a payee-initiated demand draft, the creation of the item according to the terms on its face was authorized by the person on whose account the item is drawn.

SECTION 18. Tennessee Code Annotated, Section 47-4-207, is further amended by adding as a new subsection (f) the following:

(f) A warrantor does not make the warranty under subdivision (a)(6) to a transferee or subsequent collecting bank who would not under then-applicable law make the same or a substantially identical warranty to the warrantor with respect to a payee-initiated draft transferred by the transferee or subsequent collecting bank to the warrantor.

SECTION 19. Tennessee Code Annotated, Section 47-4-208, is amended by deleting from subdivision (a)(2) the word “and”.

SECTION 20. Tennessee Code Annotated, Section 47-4-208, is further amended by deleting from subdivision (a)(3) the period and by substituting instead a semicolon and the word “and”.

SECTION 21. Tennessee Code Annotated, Section 47-4-208, is further amended by adding as a new subdivision (a)(4) the following:

(4) If the instrument is a payee-initiated demand draft, the creation of the draft according to the terms on its face was authorized by the person on whose account the instrument is drawn.

SECTION 22. Tennessee Code Annotated, Section 47-4-208, is further amended by adding as a new subsection (g) the following:

(g) A warrantor does not make the warranty under subdivision (a)(4) to a drawee who would not under then-applicable law make the same or substantially identical warranty to the warrantor with respect to a payee-initiated draft drawn on the warrantor and presented or transferred by the drawee.

SECTION 23. Tennessee Code Annotated, Section 47-3-309, is amended by deleting subsection (a) in its entirety and by substituting instead the following:

(a) A person not in possession of an instrument is entitled to enforce the instrument if:

(1) The person seeking to enforce the instrument:

(A) was entitled to enforce the instrument when loss of possession occurred, or

(B) has directly or indirectly acquired ownership of the instrument from a person who was entitled to enforce the instrument when loss of possession occurred;

(2) The loss of possession was not the result of a transfer by the person or a lawful seizure; or

(3) The person cannot reasonably obtain possession of the instrument because the instrument was destroyed, its whereabouts cannot be determined, or it is in the wrongful possession of an unknown person or a person that cannot be found or is not amenable to service of process.

SECTION 24. Tennessee Code Annotated, Section 47-4-104(a), is amended by deleting subdivision (a)(3) in its entirety and by substituting the following:

(3) "Banking day" means the part of a day on which a bank is open to the public for carrying on substantially all of its banking functions, except that any day that is not a banking day for purposes of Federal Reserve Regulations (CC 12 CFR 229, et seq., as may be amended from time to time) shall not be a banking day for purposes of Tennessee Code Annotated, Title 47, Chapter 3 or Chapter 4.

SECTION 25. This act shall take effect on May 1, 2003, the public welfare requiring it.